

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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JONATHAN KROSS,

Plaintiff,

v.

Index No.

BUFFALO CITY CEMETERY INC.

Defendant.

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## **COMPLAINT AND DEMAND FOR JURY TRIAL**

### **I. PRELIMINARY STATEMENT**

1. This arises under Title I of the Americans with Disabilities Act, 42 U.S.C. §12101, et. seq. (“ADA”), for discrimination based on disability and retaliation.

### **II. JURISDICTION AND VENUE**

2. The Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343
3. Venue is properly laid within the Western District of New York pursuant to 28 U.S.C. § 139J(b) in that the Plaintiff lives in the Western District of New York, the Defendant is located in the Western District of New York, and a substantial part of the acts or omissions giving rise to the claim occurred in the Western District of New York.

### **III. PARTIES**

4. That the Plaintiff resides in Buffalo, New York.
5. The Defendant Buffalo City Cemetery, Inc. (hereinafter “BCC”) is corporation organized and existing under the laws of the State of New York.
6. That from May 23, 2022 through June 7, 2022, Plaintiff was an employee of Defendant CMH.
7. CMH is an "employer" under Title I of the ADA as it is engaged in an industry affecting commerce and has had fifteen (15) or more employees for each working day

in each of twenty (20) or more calendar weeks in the current or preceding calendar year.

8. At all relevant times herein, Defendant BCC exercised control over the Plaintiff.
9. At all relevant times herein, Plaintiff took direction from Defendant BCC.
10. At all relevant times herein Defendant BCC and its' agents, made the decisions which led to the violations of the Plaintiff's rights under Title I of the ADA

#### **IV. PREREQUISITES TO CLAIMS UNDER TITLE I OF THE ADA**

11. That in or about August 5, 2022, Plaintiff mailed a completed and signed intake questionnaire form to the Equal Employment Opportunity Commission ("EEOC") together with a narrative summary she had prepared of the discrimination and harassment she suffered while in the employ of the Defendant as is more fully detailed in this complaint to the EEOC in Buffalo, New York.
12. On or about February 8, 2023, the EEOC uploaded to their website Plaintiff's "Right to Sue" letter advising him of the completion of the prerequisites to suit. A copy of the "Right to Sue" letter is annexed hereto as Exhibit A.

#### **V. FACTS**

13. Plaintiff was employed with the Defendant BCC as a perpetual care employee.
14. Plaintiff began employment at BCC's ground's crew on May 23, 2022
15. Prior to accepting this position, Plaintiff had fractured his ankle at a previous job back in 2021 but had since been cleared by his doctor to resume working.
16. On or about June 6, 2022. Plaintiff called into his supervisor and informed him that would be unable to work that day as he was still feeling ill from the effects of his covid booster shot that he received two days prior.
17. The next day, June 7, 2022, Plaintiff's supervisor called and stated to Plaintiff that he has recently learned that the Plaintiff was injured in his previous job and that if he was aware of this injury at the time Plaintiff was hired, the job would not have been offered to him.
18. Plaintiff was then instructed to turn in his work phone which he did the following day on June 8, 2022. At that time, Plaintiff's supervisor stated that he was not fired but that they had to let him go until they can figure out what to do next.

19. On June 9, 2022 6-9-22, BCC sent a termination letter to the Plaintiff that indicated he was terminated on June 7, 2022.
20. On June 13, 2022, Plaintiff provided a doctor's note to BCC that stated he is able to work without any restrictions.
21. That Plaintiff thereafter left several voice messages to his supervisor requesting a call back relative to him providing proof he was cleared to work without any restrictions.
22. By reason of the foregoing, Defendant has violated Plaintiff's rights pursuant to Title I of the ADA in that the Plaintiff was discriminated against due to his alleged disability.
23. That Plaintiff was subjected to discriminatory conduct by the Defendant BCC that created an offensive work environment on the basis of his alleged disability.
24. Defendant BCC's employees were in positions to adversely affect the terms, conditions and privileges of Plaintiff's employment.
25. That Defendant BCC failed to provide any reasonable accommodations to the Plaintiff that would allow him to perform her job.
26. In the alternative, Defendant BCC failed to provide Plaintiff with the opportunity to perform a different job or task of which said position was presently available at the time of Plaintiff's injury that compensated Plaintiff at the same rate of pay as the Plaintiff's current position.
27. As a result of Defendant BCC's actions, Plaintiff experienced loss of income, fear, anxiety, shame, embarrassment, emotional pain and suffering, and loss of enjoyment of life.

**WHEREFORE,** Plaintiff respectfully requests that judgment be entered against the Defendant for

- (a) Actual damages;
- (b) Compensatory damages, including but not limited to
- (c) Punitive damages;
- (d) Costs, disbursements and reasonable attorney's fees;
- (e) For such other and further relief as may be just and proper.

## **VI. DEMAND FOR JURY TRIAL**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury of all issues in this action.

Dated: February 27, 2023

/s/Seth J. Andrews  
Seth J. Andrews, Esq.  
Law Offices of Kenneth Hiller, PLLC  
*Attorneys for the Plaintiff*  
6000 North Bailey Ave., Suite 1A  
Amherst, NY 14226  
(716) 564-3288  
sandrews@kennethhiller.com